



"Rick Bevington"
<Rick.Bevington@m2consulting.com>

05/22/2002 01:51 PM

To <Nancy.Gilroy@mro.com>

cc <Bob.Parker@mro.com>

Subject FW: Revised MRO-Maximo Agreement & Revised Exhibit A

Hi Nancy,

Attached are modified agreements for your review and comment. I apologize for the lack of redlining. I didn't get that instruction in time. They do follow your original order of things. The main area of enhancement are in: term of agreement; termination events; and trying to capture what we believe is part of the intent, that being to have an arrangement that allows MRO sales to offer Hosting to prospects who fit the profile or who request it ,and still be recognized with quota credit and comp..

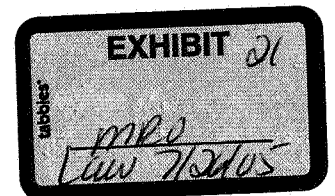
Thank you in advance for your assistance.

Regards
Rick

> -----Original Message-----
> From: Pat Ferrell [mailto:pferrell@mail.newnanutilities.org]
> Sent: Monday, May 20, 2002 5:04 PM
> To: Rick Bevington
> Subject: Revised MRO-Maximo Agreement & Revised Exhibit A
>
> <<MRO - MAXIMO SOFTWARE.doc>> <<MRO-MAXIMO -EXHIBIT A.doc>>



MRO - MAXIMO SOFTWARE.doc MRO-MAXIMO -EXHIBIT A.doc



MRO 00860
CONFIDENTIAL

**MRO SOFTWARE, INC.
MAXIMO HOSTING AFFILIATE AGREEMENT**

1. APPOINTMENT.

a) **Subscription License Grant.** Subject to the terms and conditions hereof, during the term hereof, MROI hereby grants to Hosting Affiliate the non-exclusive right and license (i) to access and execute the Product on Hosting Affiliate's Application Server only with Supported Browsers through the Internet, and (ii) to act as an application service provider ("ASP") with respect to the Products and transmit Customer data from the Product to Customers remotely through the Internet. Hosting Affiliate shall provide its Customer's with the right and license to access and use the Product for their internal purposes only, pursuant to a Customer ASP Agreement (defined below). All rights not expressly granted to Hosting Affiliate or Customer herein are expressly reserved by MROI.

b) **No Indirect Channel.** Hosting Affiliate may not exercise its rights hereunder through any third party agent(s), representative(s), distributor(s) or other person(s). Hosting Affiliate must install and use the Products on premises owned by Hosting Affiliate or a contracted co-location facility.

c) **Reservation.** Hosting Affiliate must market the Products under the trademark "MAXIMO" (or other marks designated by MROI), and Hosting Affiliate shall not market the Products under any other name.

2. DEFINITIONS.

a) **"Agreement Date"** means the date set forth underneath MROI's signature below.

b) **"Customer ASP Agreement"** means a written, shrink-wrap or click-wrap agreement that provides a Customer with the right and license to remotely access and use the Product as hosted by Hosting Affiliate on Hosting Affiliate's Application Server for its internal purposes only, under terms substantially similar to those specified in Exhibit B.

c) **"Enhancements"** means the fixes, updates, upgrades and localized, translated or new versions of the Products that MROI may periodically release during the Term. Enhancements are provided at no additional charge.

d) **"Products"** means (i) the computer programs and related documentation described in Exhibit A that MROI markets, maintains and supports as of the date of this Agreement and (ii) all Enhancements.

e) **"Customer"** means the ultimate end-users who are authorized to access and use the Product on Hosting Affiliate's Application Server within the Territory (as specified in the applicable royalty reports).

f) **"Territory"** means the geographic area(s) identified in Exhibit A.

g) **"Hosting Affiliate's Application Server"** means the computer(s) dedicated by Hosting Affiliate for the purpose of hosting the Product for access over the Internet.

h) **“Supported Browsers”** means Microsoft Internet Explorer, version 5.0 and higher.

3. RESELLER’S OBLIGATIONS.

a) **Best Efforts.** Hosting Affiliate will use its best efforts throughout the Territory to (i) promote, solicit and obtain Customers for the Products, and (ii) host and provide ASP services to Customers in accordance with the highest industry standards and fulfill all of its obligations under all Customer ASP Agreements, and (iii) develop the good will and reputation of MROI.

b) **Internal Copy.** MROI will provide Hosting Affiliate with a single copy of the Products at no charge (the “Internal Copy”). Subject to this Agreement, MROI grants Hosting Affiliate a non-exclusive and non-transferable license to use the Internal Copy solely to provide Customers with access to a hosted version of the Product and remotely conduct Customer demonstrations within the Territory. MROI will periodically offer updates to the Internal Copy as new versions become commercially available. Hosting Affiliate will not sublicense, assign, or otherwise transfer the Internal Copy to any person without MROI’s prior approval. Hosting Affiliate will only provide hosting services to those Customers who have agreed to be bound by the terms and conditions as defined in Article 1 (a) and have paid the appropriate fees. Hosting Affiliate will only conduct Product demonstrations via remote access to Hosting Affiliate’s Application Server and under circumstances where Hosting Affiliate is in direct control of the demonstration, and where all confidential information and materials related to the Products are removed from the prospective Customer’s premises at the end of each business day.

c) **Promotional Literature.** Hosting Affiliate will use the brochures and other promotional literature describing the Products that MROI may provide to Hosting Affiliate in the English language (the “Promotional Literature”). Hosting Affiliate may reproduce the Promotional Literature for distribution within the Territory.

d) **Prices.** Hosting Affiliate will pay the agreed upon prices as defined in Exhibit A.

e) to provide MAXIMO in a hosted environment.

4. MROI’S OBLIGATIONS.

a) **Marketing Materials.** MROI will provide Hosting Affiliate, at no additional charge, with the initial quantity of Promotional Literature that MROI deems appropriate for Hosting Affiliate to promote the Products and solicit Customers.

b) **Enhancements.** MROI will offer Hosting Affiliate the Enhancements within a reasonable time from when they become generally available. This will not be interpreted to require MROI to (i) develop and release Enhancements or (ii) customize the Enhancements to satisfy the particular requirements of Customers. In addition Beta version will be offered solely for the purpose of testing and upgrade verification prior to issuance of the Enhancements.

5. SALES PROCESS.

a) **Notification.** When Hosting Affiliate locates a prospective Customer, Hosting Affiliate will be responsible for notifying MROI, and for closing the sale. If Hosting Affiliate requires assistance in closing the sale, MROI shall provide resources at no cost to Hosting Affiliate.

b) **Contracting.** Hosting Affiliate will ensure that all customers using the hosting version of the Product agree to be bound by the terms and conditions as defined in Article 1 (a). For Customers who wish to purchase a perpetual license, MROI will contract directly with each customer, using such forms and processes as MROI sees fit. If a prospective Customer requests a change in the terms contained in MROI's standard agreements, MROI will attempt in good faith to reach terms with each acceptable, bona fide prospective Customer referred by Hosting Affiliate.

c) **Fees.** For Customers who actually purchase a perpetual license as a result of Hosting Affiliate's referral, MROI will pay Hosting Affiliate a referral fee as set forth on Exhibit A for each Customer. For Customers who contract with Hosting Affiliate for access to the hosted version of the Product, Hosting Affiliate will pay MROI the license fees set forth in Exhibit A.

d) **Exclusions.** MROI will not be obligated to pay Hosting Affiliate with respect to any Customer who signs a contract after the expiration of six months from Hosting Affiliate's referral. MROI will not be obligated to pay Hosting Affiliate any fees with respect to Customers that MROI had a prior business contact or relationship with; MROI must notify Hosting Affiliate of this exclusion within 30 days following Hosting Affiliate's written referral.

e) **Payment.** Both parties agree that any fees owed shall be paid within thirty (30) days following the receipt of net fees.

6. NO WARRANTY, SUPPORT OR LIABILITY.

a) **Limited Pass-Through Performance Warranty.** MROI grants the following limited performance warranty to Hosting Affiliate for purposes of pass-through to Customers. For a period of ninety (90) days after the purchase by the Customer of the right and license to access and use a Product, MROI warrants to Hosting Affiliate that such Product shall conform to, and operate substantially in accordance with the documentation provided to Hosting Affiliate by MROI. **RESELLER'S SOLE AND EXCLUSIVE REMEDY AND MROI'S SOLE AND EXCLUSIVE LIABILITY FOR BREACH OF THIS WARRANTY SHALL BE THE REPAIR OR REPLACEMENT OF DEFECTIVE OR NON-CONFORMING SOFTWARE PRODUCT UNITS OR CANCELLATION OF ANY UNUSED PORTION OF THE CONTRACT.** MROI shall have no liability or obligation to any Customer of any kind or nature, and Hosting Affiliate shall indemnify MROI from and against any and all Customer claims, including without limitation all claims arising under all Customer ASP Agreements.

b) **Disclaimer.** ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY MROI OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR

PARTICULAR PURPOSE OR USE OR AGAINST INFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

c) **Support.** Hosting Affiliate shall (a) on an ongoing basis monitor and take advantage of the technical and support related resources made available by MROI on-line, and (b) promptly install and/or apply all Enhancements, corrections, bug fixes, updates and upgrades which may be made available by MROI from time to time, and (c) maintain the Products hosted by Hosting Affiliate at the highest release level made generally available by MROI, and provide all Customers with commercially reasonable telephone support, functional assistance, advice, workarounds and maintenance. MROI shall provide Hosting Affiliate with all escalation technical support to rectify Maximo® software related issues. MROI shall have no liability or obligation to any Customer of any kind or nature, and Hosting Affiliate shall indemnify MROI from and against any and all Customer claims, including without limitation all claims arising under all Customer ASP Agreements.

d) UNDER NO CIRCUMSTANCES WILL MROI, ITS LICENSORS, AGENTS, RESELLERS OR RELATED COMPANIES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF AGENTS OR ITS CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF THE SOFTWARE, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH MROI, ITS LICENSORS AND RELATED COMPANIES MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO MROI BY AGENT FOR THE SPECIFIC ITEM THAT DIRECTLY CAUSED THE DAMAGE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

7. INFORMATION.

a) **Confidentiality.** Hosting Affiliate acknowledges that the Products and associated documentation, manuals, technical and functional specifications, and MROI's technical, financial, marketing, strategic and operational plans and strategies incorporate confidential and proprietary information developed or acquired by or licensed to MROI (the "Information"). Hosting Affiliate will take all reasonable precautions necessary to safeguard the confidentiality of the Information, including without limitation (i) those taken by Hosting Affiliate to protect its own confidential information and (ii) those which MROI may reasonably request from time to time. Hosting Affiliate will not allow the removal or defacement of any confidentiality or proprietary notice placed on the Products or other items of Information. MROI mutually agrees to take all reasonable precautions necessary to safeguard the confidentiality of Hosting Affiliate's proprietary and confidential information including Hosting Affiliate's platform.

b) **Ownership.** All patents, copyrights, trade secrets and other proprietary rights in or related to the Products and Information are and will remain the exclusive property of MROI or its licensors, whether or not specifically recognized or perfected under the laws of the Territory. Hosting Affiliate will not take any action that jeopardizes MROI's or its

licensors' proprietary rights or acquire any right in the Products or Information, except the limited rights specified in this Agreement. Unless otherwise agreed, MROI or its licensor will own all rights in any copy, portion, extract, translation, selection, compilation and derivation of the Products, MROI Promotional Literature or any improvement or development thereof and all applications developed using the products.

c) **Use.** Hosting Affiliate will use the Products and Information solely to perform its hosting and ASP services and marketing activities pursuant to this Agreement. Except as specifically authorized under this Agreement, Hosting Affiliate will not copy the Products or items of Information without MROI's prior approval. Hosting Affiliate will not translate, modify, adapt, decompile, disassemble or reverse engineer the Products, except as and to the extent specifically authorized by applicable law.

d) **Disclosure.** Hosting Affiliate will not disclose, in whole or in part, the Products or any other item that MROI designates as confidential to any person, except to (i) Customers as and to the extent contemplated under this Agreement and (ii) those of Hosting Affiliate's employees who require access to perform its obligations under this Agreement and have executed a confidentiality agreement protecting the Products and Information as required hereunder.

e) **Unauthorized Use or Disclosure.** Hosting Affiliate acknowledges that any unauthorized use or disclosure of the Products or any other item of Information may cause irreparable damage to MROI or its licensors. If an unauthorized use or disclosure occurs, Hosting Affiliate will promptly notify MROI and take, at Hosting Affiliate's expense, all steps which are necessary to recover the Product or Information and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If Hosting Affiliate fails to take these steps in a timely and adequate manner, MROI may take them in its own or Hosting Affiliate's name.

8. MARKS.

a) **Ownership.** All trademarks, service marks, trade names, logos or other words or symbols identifying the Products or MROI's business (the "Marks") are and will remain the exclusive property of MROI or its licensors, whether or not specifically recognized or perfected under the laws of the Territory. Hosting Affiliate will not acquire any right in the Marks, except for the limited right to market and promote the Products and Hosting Affiliate's services as provided in Sections 1, 3 and 8(b) of this Agreement. Hosting Affiliate will not register, directly or indirectly, any trademark, service mark, trade name, company name or other proprietary or commercial right that is identical or confusingly similar to the Marks or that constitute translations thereof into the language(s) spoken within the Territory.

b) **Use.** Hosting Affiliate will use the Marks exclusively to advertise and promote the Products within the Territory. All advertisements and promotional materials will (i) clearly identify MROI as the owner of the Marks, (ii) conform to MROI's then-current trademark and logo guidelines and (iii) otherwise comply with any local notice or marking requirement contemplated under the laws of the Territory.

9. TERM AND TERMINATION.

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a) **Term.** This Agreement will become effective, as of the Agreement date, for a three (3) year period upon its execution by MROI and Hosting Affiliate unless terminated as defined below and in Exhibit A.

b) **Renewal.** Upon the expiration of the initial term specified in Paragraph 9(a), this Agreement may be renewed for renewal terms of 36 months, but only if the parties expressly agree to do so at least 30 days before the expiration date. Either party may withhold its consent to an extension entirely in its discretion, with or without cause and without any liability as a result.

c) **Termination for Convenience.** Either party may terminate this Agreement for any reason, with or without cause, upon 90 days' written notice to the other party.

d) **Termination for Cause.** Either party will have just cause to terminate this Agreement, without judicial or administrative notice or resolution, immediately upon notice to the other party, if the other party or any of its employees breaches any obligation under this Agreement, and such party fails to cure the breach to the notifying party's satisfaction within 30 days after it demands a cure. This section shall not apply to Hosting Affiliate's customers existing on the date of such termination.

e) **Termination Obligations.** Upon the expiration or termination of this Agreement, all rights granted to Hosting Affiliate hereunder will immediately cease, and Hosting Affiliate will (i) promptly pay any Fees owed; (ii) promptly comply with the termination obligations specified below and (iii) otherwise cooperate with MROI to terminate relations in an orderly manner. This section shall not apply to Hosting Affiliate's customers existing on the date of termination.

i) **Materials.** Hosting Affiliate will, at MROI's, option, destroy or deliver to MROI or its designee all items within Hosting Affiliate's possession or control that contain any Information or bear a Mark.

f) **Survival.** The provisions of Sections 6(a)(b)(c)(d), 7(a)(b)(d)(e), 8 (a) and 9(g) will survive the expiration or termination of this Agreement.

10. MISCELLANEOUS.

a) **U.S. Export Restrictions.** Hosting Affiliate acknowledges that the Products and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Hosting Affiliate will not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to Cuba, Libya, North Korea or any country that is embargoed by Executive order, unless Hosting Affiliate has obtained the prior written authorization of MORI and the U.S. Commerce Department. Upon notice to Hosting Affiliate, MROI may modify this list to conform to changes in the U.S. Export Administration Regulations.

b) Compliance With Laws.

(i) **Local Compliance.** Hosting Affiliate will, at its expense, obtain, and maintain the governmental authorizations, registrations and filings that may be required under the laws of the Territory to execute or perform this Agreement. Hosting Affiliate will otherwise comply with all laws, regulations and other legal requirements within the Territory

that apply to this Agreement, including tax and foreign exchange legislation. Hosting Affiliate will promptly notify MROI of any change in these laws, regulations or other legal requirements that may affect the importation of the Products or Hosting Affiliate's performance of this Agreement.

(ii) **Unlawful Payments.** Hosting Affiliate will not use any payment or other benefit derived from MROI to offer, promise or pay any money, gift or any other thing of value to any person for the purpose of influencing official actions or decisions affecting this Agreement, while knowing or having reason to know that any portion of this money, gift or thing will, directly or indirectly, be given, offered or promised to (i) an employee, officer or other person acting in an official capacity for any government or its instrumentalities or (II) any political party, party official or candidate for political office.

c) **Independent Parties.** Hosting Affiliate and MROI are independent parties. Nothing in this Agreement will be construed to make either party an agent, employee, franchisee, joint venturer or legal representative of the other party. Hosting Affiliate will neither have nor represent itself to have any authority to bind MROI to any obligation.

d) **Notices.** Any notice, approval or other communication required or permitted under this Agreement will be given in the English language and will be sent in writing by telex, telefax, courier or certified mail, postage prepaid, to the address specified on page one or to any other address that may be designated by prior notice. Any notice or other communication delivered by telex or telefax (with answerback) will be deemed to have been received the 1st day after it is sent. Any notice or other communication sent by courier will be deemed to have been received on the 3rd day after its date of posting. Any notice or other communication sent by certified mail will be deemed to have been received on the 7th business day after its date of posting. Notice to MROI must be sent to the attention of its General Counsel.

e) **Assignment.** Hosting Affiliate may not delegate, sub-contract or otherwise transfer this Agreement or any of its rights or obligations without the MROI's prior written approval. Such approval will not be unreasonably withheld. Prior approval shall not be required upon a change of ownership of Hosting Affiliate.

f) **Waiver Amendment, Modification.** Any waiver, amendment or other modification of this Agreement will not be effective unless in writing and signed by the party against whom enforcement is sought.

g) **Language.** This Agreement will be interpreted and performed in the English language.

h) **Legal Actions.** All actions arising under or in connection with this Agreement shall be conducted in the appropriate state or federal courts in Massachusetts, and each party hereby irrevocably consents to exclusive jurisdiction and venue in Massachusetts, and waives its right to pursue legal action under this Agreement in any other jurisdiction. Nothing in this Agreement will restrict, prevent, hinder or delay MROI from seeking interim or permanent injunctive relief against Hosting Affiliate, in the courts having jurisdiction over the Hosting Affiliate.

i) **Equitable Relief.** The covenants and agreements of Hosting Affiliate under this Agreement, including without limitation those specified in Sections 1, 7, 8, ((e) and 10(e)), are of a special and unique character, and Hosting Affiliate acknowledges that

money damages alone will not reasonably or adequately compensate MROI for any breach of such covenants and agreements. Therefore, the parties expressly agree that in the event of the breach or threatened breach of any such covenants or agreements, in addition to other rights or remedies which MROI may have, at law, in equity, or otherwise (such as its right to recover monetary damages) MROI shall be entitled to injunctive or other equitable relief compelling specific performance of, and other compliance with, such covenants and agreements.

j) **Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws the Commonwealth of Massachusetts, excluding its conflict of law principles. MROI and Hosting Affiliate exclude the United Nations Convention on Contracts for the International Sale of Goods from this Agreement and from all transactions hereunder.

k) **Entire Agreement.** This Agreement and its Exhibits constitute the complete and entire statement of all terms, conditions and representations of the agreement between MROI and Hosting Affiliate with respect to its subject matter and supersedes all prior writings or understandings.

Exhibit A: Business Term

Exhibit B: Customer ASP Agreement

Exhibit C: Referral Registration Form

Witness the hands and seals of the undersigned on the date shown.

MROI, Inc.

Hosting Affiliate:

Signature

Signature

Printed Name

Printed Name

Title

Agreement Date

Title

Date

EXHIBIT A**To MRO Software, Inc. Hosting Affiliate Agreement
between MRO Software, Inc. and _____****Date:** _____

1. **Term:** Three (3) years from execution. Within ninety (90) days from the effective date of this Agreement, both parties agree to negotiate an annual quota. If MROI fails to meet it's annual quota, the monthly fee due MROI under Paragraph 4 of this Exhibit A shall be reduced to 20% of the net monthly fee for the following year. Subsequent renewals will be renewed on an annual basis thirty (30) days prior to expiration of the current term.

2. **Products:** MAXIMO version 4.X and 5.X

3. **Territory:** Worldwide.

4. **Fees:** For new Customer's using the Product(s) on a hosted basis, Hosting Affiliate agrees to pay MROI 50% of the net monthly fees received by Hosting Affiliate (on a monthly basis). For existing Customer's as of the date of this Agreement Hosting Affiliate agrees to continue to pay MROI 20% of the net monthly fees received by Hosting Affiliate (on a monthly basis).

For Customer's who purchase the Product(s) directly from MROI, there will be no fees owed to MROI for such hosting services.

MROI agrees to pay a 5% referral fee to Hosting Affiliate for referrals which result in sales by MROI (as further defined in the Agreement). The information on Exhibit C must be completed and accepted in order for such fees to be paid to Hosting Affiliate.

Hosting Affiliate to pay all fees as agreed to be due (for it's current end-user base) upon signing this Agreement.

5. **Payment Terms:** NET 30 from receipt of fees paid.

6. **Lead Registration:** Hosting Affiliate to provide MROI a report of all potential clients as they become known to Hosting Affiliate. Primarily, MROI will be the lead source for hosting opportunities. These opportunities will be passed to Hosting Affiliate following the same guidelines that are currently in place for Midtier accounts. In other words, enterprise sales consultants would have first right of refusal for any account that falls within in their vertical (including strategic) and sizing guidelines.

Additionally, Hosting Affiliate consulting may uncover opportunities. Prior to pursuing, Hosting Affiliate will register the opportunities to be sure to avoid channel conflict and ensure that their account falls within Midtier guidelines. Anything outside those guidelines would need to be reviewed by the appropriate sales channel.

All opportunities will be tracked with Hosting Affiliate denoted as the partner and listed with zero (\$0) dollars associated in revenue. Hosting Affiliate will be responsible to provide the sales consultant associated with the opportunity timely updates.

7. **Program Fee:** None.

MRO Software, Inc.

Hosting Affiliate

By: _____

By: _____

(Name and Title)

(Name and Title)

MRO 00870
CONFIDENTIAL

Date: _____

Date: _____

MRO 00871
CONFIDENTIAL